

Appeal from automatic expiration of the right to cut and remove timber under the terms of timber sale contract, ID-050-TS2-2, forwarded by District Manager, Shoshone District, Idaho, Bureau of Land Management.

Affirmed.

1. Timber Sales and Disposals.

In the absence of a timely written request for an extension of a timber sale contract, pursuant to the terms thereof, BLM may properly treat the right of the holder of the contract to cut and remove timber as having expired at the end of the contract's extended term.

APPEARANCES: David G. Aden, pro se; Robert S. Burr, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

David G. Aden has appealed from the automatic expiration of his right to cut and remove timber under timber sale contract, ID-050-TS2-2, which appeal was forwarded to the Board by the District Manager, Shoshone District, Idaho, Bureau of Land Management (BLM).

On November 19, 1982, BLM and appellant entered into a contract for the sale of timber in portions of sec. 2, T. 3 N., R. 17 E., Boise Meridian, Idaho. Appellant had been declared the high bidder for tract 82-2 in the Lime Kiln Gulch timber sale, held October 6, 1982. Section 4 of the contract provides that the "[p]urchaser's right to cut and remove such timber shall expire eighteen (18) months after [the] date [the contract is signed by an authorized officer of BLM]," subject to any extensions that may be granted pursuant to section 9 of the contract. Section 9 in turn provides, in relevant part, that:

If Purchaser shows that delay in cutting and removal was due to causes beyond his control and without his fault or negligence, the Authorized Officer may grant an extension of time, not to exceed one year, upon written request of Purchaser. Such written request shall be filed with the

Authorized Officer prior to the expiration of the time for cutting and removal expressed in Sec. 4. [Emphasis added.]

Therefore, under the terms of his contract, appellant's right to cut and remove timber was set to expire on May 19, 1984. On April 25, 1984, appellant filed a written request for a 90-day extension of the contract because of appellant's inability to reach the timber sale area due to excessive snow. By letter dated April 27, 1984, the Area Manager, Monument Resource Area, Idaho, BLM, notified appellant that BLM was extending appellant's right to cut and remove timber under his contract for 2 months, until July 19, 1984, and that "[a]ll other terms and conditions of your original contract shall remain in full force and effect." By letter dated July 18, 1984, BLM notified appellant that the "[t]ime for cutting and removal of timber sold under Contract Number ID-050-TS2-2, expires on Thursday, July 19, 1984." Finally, by letter dated July 31, 1984, BLM notified appellant that it planned to readvertise the timber for another competitive bid sale "in late August" and that appellant should pile accumulations of slash and reduce the height of stumps, in order to "reduce your obligation under the terms of the contract."

On August 17, 1984, appellant submitted a letter to BLM, stating that he was, "appealing your decision of terminating the expired log harvest contract." Appellant explained that he had been hampered from the beginning in cutting and removing timber from the timber sale area in part due to excessive snow which delayed logging operations in the spring of 1983 and the illness of his prime advisor in the spring of 1984. Appellant requested "another chance to perform upon the contract."

On October 12, 1984, the Office of the Field Solicitor, on behalf of BLM, filed a request with the Board to dismiss appellant's appeal where the timber sale contract "expired by virtue of its own terms" and no adverse decision was issued by a BLM official terminating appellant's contract. The Solicitor notes that appellant met with the Area Manager, Monument Resource Area, on July 18, 1984, and submits a memorandum from the District Manager, Shoshone District, to the State Director, dated August 24, 1984, which states:

On July 18, 1984, with only one more day remaining in the time for cutting and removal, Mr. Aden visited with Ervin Cowley, Monument Resource Area Manager, to request another extension. He presented no reasons for non-performance other than a lack of logging experience. Ervin advised Mr. Aden that he would grant another extension only if he received a written request by close of business on July 19, 1984, specifying the name of a logging contractor that would carry out the logging activities and a specific time frame for performance. A written request was never received.

[1] Appellant's right to cut and remove timber under timber sale contract ID-050-TS2-2 expired on July 19, 1984, pursuant to the terms of the extended contract. Moreover, no written request for an extension of time was filed prior to the expiration of the extended contract. Therefore, we conclude that appellant has not demonstrated any reason why BLM may not correctly treat

his right to cut and remove timber under timber sale contract ID-050-TS2-2 as having expired on July 19, 1984. 1/

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

1/ On Oct. 16, 1984, Congress enacted the Federal Timber Contract Payment Modification Act, P.L. 98-478, 98 Stat. 2213 (1984), which, in part, provided relief to the holders of certain timber sale contracts, releasing them from the obligation to cut, remove, and pay for timber upon payment of a buy-out charge. However, the relief provisions of the Act are not available to appellant because they apply to timber sale contracts which were bid prior to Jan. 1, 1982. Appellant's contract was bid on Nov. 6, 1982, pursuant to a sales notice dated Sept. 16, 1982.

